

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 28, 2001

USE OF NEW CONSTRUCTION GRANTS

PURPOSE OF REPORT

- To amend the regulations regarding the use of new construction grants ("Use of Grants") for new construction School Facility Program (SFP) projects.
- To present requests to use new construction SFP grants pursuant to existing regulations.

BACKGROUND

At previous meetings, the State Allocation Board (SAB) expressed its concerns with requests for "Use of Grants" under provisions of current SFP regulations. Additionally, at the meeting on February 28, 2001, the SAB directed that all requests for "Use of Grants" for new construction projects be postponed until the SAB Implementation Committee has reviewed the current "Use of Grants" regulations and provided recommendations to the SAB to address these concerns.

The SAB expressed the following concerns regarding the current "Use of Grants" regulations:

- The perception that the SAB is changing the rules after a district made a financial commitment to a project and that there should be a "grandfathering" provision for certain projects in the design process.
- Discontinuing approvals of new construction projects that do not primarily build classrooms.
- Acknowledgement that "non-classroom" facilities are an essential part of the total school site.
- Utilization of excluded portable classrooms (Education Code 17071.30) in the district's "housing plan".
- "Use of Grants" requests for pupil grants that exceed 150 percent of the pupil capacity of the project while priority points are in effect.
- "Use of Grants" request by a district approved for financial hardship status when its "housing plan" contains a method of housing pupils which utilizes funds available to the district for contribution to the current project.
- Making "conceptual approvals" of new construction "Use of Grants" requests.

REGULATIONS

On December 8, 1999, the SAB adopted a regulation allowing a district to receive new construction grants that exceed the capacity of a project and to use grant eligibility at a grade level other than the proposed project. Approval of such items will be handled on a case-by-case basis (refer to Regulation Section 1859.77.2).

STAFF COMMENTS

The SAB Implementation Committee discussed these issues on March 2, 2001 and support the following:

1. A "grandfathering" provision that will allow approval of "Use of Grants" under the current regulations as long as the plans and specifications for the project are submitted to the Division of the State Architect no later than April 30, 2001 and the alternative housing plan does not include:

STAFF COMMENTS (cont.)

- Excluded portables under the provisions of Education Code Section 17071.30.
 - Use of district funds for the construction of alternative housing facilities when the district is financial hardship.
2. Requests for pupil grants that do not exceed 135 percent of the pupil capacity may be made at anytime, regardless if priority points are in effect.
 3. Requests for pupil grants that exceed 135 percent of the pupil capacity may be made only when priority points are not in effect.

RECOMMENDATIONS

1. Rescind Section 1859.77.2 as shown on Attachment A and begin the regulatory process.
2. Add new Section 1859.77.2 as shown on Attachment A and begin the regulatory process.
3. Adopt the amendments to the *Application for Funding*, Form SAB 50-04 (revised 03/02) as shown on Attachment B and begin the regulatory process.
4. Provide that requests for "Use of Grants" made under the provisions of the current Regulation Section 1859.77.2 (i.e. prior to amendments by this action) will be recommended for approval by the OPSC as long as the final plans and specifications (P&S) for the project were submitted to the Division of the State Architect (DSA) no later than April 30, 2001 and the alternative housing plan does not include:
 - Excluded portables under the provisions of Education Code Section 17071.30.
 - The use of district funds for the construction of alternative housing facilities when the district is financial hardship.
5. Provide that requests for "Use of Grants" made for a project where the final P&S for that project were submitted to the DSA after April 30, 2001 must comply with the proposed amendments to Regulation Section 1859.77.2 as shown on Attachment A.
6. Approve the "Use of Grants" requests for the projects shown on Attachment C. These requests are consistent with Recommendation Number 4.
7. Deny the "Use of Grants" requests for the projects shown on Attachment D. The districts' alternative housing plan include "excluded portables" or the request is for "conceptual approval".

ATTACHMENT A
Use of New Construction Grants

1. Rescind Section 1859.77.2 as follows:

~~Section 1859.77.2. Use of New Construction Grant Funds.~~

~~New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.~~

~~A district may request a new construction grant:~~

- ~~(a) That exceeds the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the Board by these regulations subject to all the following:~~
 - ~~(1) The district has submitted a school board resolution, which includes all the following:~~
 - ~~(A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project as determined in (a).~~
 - ~~(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.~~
 - ~~(C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project as determined in (a).~~
 - ~~(2) The plan identified in (a)(1)(A) is acceptable to the CDE and the OPSC.~~
 - ~~(3) When a new construction grant request exceeds 150 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations, the Board may require approval on a case by case basis.~~
- ~~(b) Utilizing new construction grant eligibility determined at a different grade level than the proposed project subject to all the following:~~
 - ~~(1) The district has submitted a school board resolution, which includes all the following:~~
 - ~~(A) A plan that identifies how the district has or will adequately house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.~~
 - ~~(B) Acknowledgement that funds for the purpose of housing pupils are being diverted to an alternative use.~~
 - ~~(C) Acknowledgement that the State has satisfied its obligation to house the number of pupils for which the district will use grant eligibility at another grade level for the project as determined in (b)(3) below.~~
 - ~~(2) The plan identified in (b)(1)(A) is acceptable to the CDE.~~
 - ~~(3) The district is using all new construction grant eligibility in the following order:~~
 - ~~(A) At the grade level of the proposed project.~~
 - ~~(B) At the lowest grade level other than the proposed project.~~
 - ~~(C) At the next highest grade level other than the proposed project.~~
 - ~~(4) The new construction grant amount shall be determined on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any additional grants or excessive cost grants the district qualifies for as provided by these regulations. Any excessive cost grants provided pursuant to Section 1859.83(c) shall be determined on the total of all grants provided for the project.~~
 - ~~(5) The Board may require approval of the district's request on a case by case basis.~~

~~Note: Authority cited: Section 17072.13, Education Code.~~

~~Reference: Sections 17072.13 and 17072.35, Education Code.~~

2. Add new Section 1859.77.2 as follows:

Section 1859.77.2. Use of New Construction Grant Funds.

New Construction grant funds shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Use of New Construction Grants may be requested as follows:

- (a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the district has adopted a school board resolution that includes the following:
 - (1) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds, if the district has received financial hardship approval pursuant to Section 1859.81.
 - (2) Acknowledgement that funds for the purposes of housing pupils are being diverted to an alternative use.
 - (3) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project.
- (b) A district may utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all the following:
 - (1) The district has adopted a school board resolution that includes the following:
 - (A) A plan that identifies how the district has or will adequately house the excess pupils receiving grants in the project. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds, if the district has received financial hardship approval pursuant to Section 1859.81.
 - (B) Acknowledgement that funds for the purposes of housing pupils are being diverted to an alternative use.
 - (C) Acknowledgement that the State has satisfied its obligation to house the pupils receiving grants in the project.
 - (2) The district must use its New Construction Grant eligibility in the following order:
 - (A) At the grade level of the proposed project.
 - (B) At the lowest grade level other than the proposed project.
 - (C) At the next highest grade level other than the proposed project.
- (c) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may request New Construction Grants that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subdivision (a)(1), (a)(2) and (a)(3) are met.
- (d) When the priority point mechanism described in Section 1859.91 has not been implemented, a district may utilize new construction grants eligibility determined at different grade level than the proposed project that exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations provided all the conditions in subdivision (b)(1) and (b)(2) are met:

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.